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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,128

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Toshiharu Iwasaki

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/540,128	<b>Applicant(s)</b> IWASAKI ET AL.	
	<b>Examiner</b> WALTER B. AUGHENBAUGH	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/14/08.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/15/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1, 6 and 7 in the Amendment filed July 14, 2008 have been received and considered by Examiner.
2. The amendments made in the abstract in the Amendment filed July 14, 2008 have been received and considered by Examiner.

### ***WITHDRAWN OBJECTION***

3. The objection to the abstract made of record in the previous Office Action mailed March 14, 2008 has been withdrawn due to Applicant's amendments in the abstract.

### ***WITHDRAWN REJECTION***

4. The 35 U.S.C. 112 rejection of claims 1 and 5 made of record in the previous Office Action mailed March 14, 2008 have been withdrawn due to Applicant's amendments (and cancellation of claim 5).

### ***NEW REJECTION***

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 6-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakae et al. (USPN 5,089,323).

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In regard to claim 1, Nakae et al. teach a container (col. 3, lines 64-66) that comprises a sheet having a layer that comprises, for example, a mixture of a propylene block copolymer and an ethylene/alpha olefin copolymer having four or more carbon atoms (col. 3, lines 25-49).

Nakae et al. teach that the sheet has a high density polyethylene layer that is disposed in the inner side of the container (col. 3, lines 25-49). The refractive index of the xylene-soluble portion of the mixture of polymers (A) and (B) of the composition of Nakae et al. falls within the claimed range since the composition of Nakae et al. corresponds to the claimed composition (col. 3, lines 25-49).

In regard to claim 2, Nakae et al. teach that a preferred material for the ethylene/alpha olefin copolymer is an ethylene/alpha olefin copolymer that has 18 to 45% by weight of a xylene extractable content (col. 3, lines 40-45), a range that overlaps with the claimed content range.

In regard to claim 3, the ratio of the melt flow rates of the two polymers of the mixtures taught by Nakae et al. fall within and/or overlap with the claimed ratio range of from 0.3 to 3.0 since the disclosed melt flow rates of the various suitable polymers for the mixture result in ratios that fall within and/or overlap with the claimed ratio range (col. 6, lines 40-48 and col. 7, lines 20-30).

In regard to claims 6 and 7, the mixture of Nakae et al., in the instance where the mixture includes high density polyethylene, falls within the scope of the recitation of claims 6 and 7 that the high density polyethylene be present in the layer in an amount of 20 mass% or more (col. 3, lines 25-49). High density polyethylene has a density of 0.950 g/cm<sup>3</sup> or more, as evidenced by USPN 7,317,045 to Zanchetta et al. at col. 6, lines 25-36.

In regard to claim 8, the thickness of the resin layer of Nakae et al. occupies 100% of the entire thickness of the sheet (col. 3, lines 25-49).

Claims 9-13 are directed solely to the methods of determining various properties of either the high density polyethylene recited in claim 1, the polyolefin resin composition recited in claim 1, or the xylene-soluble portion of the mixture of polymers (A) and (B), and have therefore not been given any patentable weight since the method of determining a property of a material of an article is not germane to the patentability of the article itself.

### ***Response to Arguments***

7. Applicant's arguments regarding the 35 U.S.C. 102 rejection of claim 1 have been fully considered but are not persuasive.

Applicant argues that "case" in col. 3, lines 64-66 does not mean "container". The Office Action does not state that the word "case" is being relied upon as a teaching of "container". Applicant admits on page 8 of the Amendment that Nakae et al. teach that the sheet "can be used in a package". Nakae et al. teach a container "produced from a film or sheet" (language of claim 1, line 1) because Nakae et al. teach a container that comprises a film or sheet (a film or sheet that is "used in" a container), as Applicant admits.

The refractive index of the xylene-soluble portion of the mixture of polymers (A) and (B) of the composition of Nakae et al. falls within the claimed range since the composition of Nakae et al. corresponds to the claimed composition (col. 3, lines 25-49).

Nakae et al. teach that the sheet has a high density polyethylene layer that is disposed in the inner side of the container (col. 3, lines 25-49).

Applicant alleges unexpected results, but there is no 35 U.S.C. 103 rejection of record.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /  
Examiner, Art Unit 1794

10/24/08

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794